

Letter of Findings Number: 04-20110061
Use Tax
For Tax Years 2007 and 2008

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ISSUE

I. Use Tax—Agricultural Exemption.

Authority: IC § 6-2.5-3-2; IC § 6-2.5-5-1; IC § 6-2.5-5-2; IC § 6-8.1-5-1; [45 IAC 2.2-5-4](#).

Taxpayer protests the assessment of use tax on multiple John Deere "Gator."

STATEMENT OF FACTS

Taxpayer is an Indiana farmer. As the result of an investigation, the Indiana Department of Revenue ("Department") issued proposed assessments for use tax on the purchase of a John Deere "Gator" purchased in the tax year 2008. Taxpayer protests the proposed assessment of use tax on its purchase of the John Deere "Gator." An administrative hearing was conducted and this Letter of Findings results. Further facts will be supplied as required.

I. Use Tax—Agricultural Exemption.

DISCUSSION

Taxpayer protests the imposition of use tax on the purchase of a John Deere "Gator." Taxpayer protests that the use of the John Deere "Gator" for farm related activities, inter alia, hauling feed to livestock, checking on livestock and spreading animal waste. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

The use tax is imposed under IC § 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

The relevant statutes regarding agricultural exemptions are IC § 6-2.5-5-1 and IC § 6-2.5-5-2. IC § 6-2.5-5-1 states:

Transactions involving animals, feed, seed, plants, fertilizer, insecticides, fungicides, and other tangible personal property are exempt from the state gross retail tax if:

- (1) the person acquiring the property acquires it for his direct use in the direct production of food and food ingredients or commodities for sale or for further use in the production of food and food ingredients or commodities for sale; and
- (2) the person acquiring the property is occupationally engaged in the production of food and food ingredients or commodities which he sells for human or animal consumption or uses for further food and food ingredient or commodity production.

IC § 6-2.5-5-2 states:

(a) Transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities.

(b) Transactions involving agricultural machinery or equipment are exempt from the state gross retail tax if:

- (1) the person acquiring the property acquires it for use in conjunction with the production of food and food ingredients or commodities for sale;
- (2) the person acquiring the property is occupationally engaged in the production of food or commodities which he sells for human or animal consumption or uses for further food and food ingredients or commodity production; and
- (3) the machinery or equipment is designed for use in gathering, moving, or spreading animal waste.

(Emphasis added).

Also of relevance is [45 IAC 2.2-5-4](#), which states in relevant part:

...

(c) The following is a partial list of items which are considered subject to the sales tax.

TAXABLE TRANSACTIONS

Fences, posts, gates, and fencing materials.

Water supply systems for personal use.

Drains.

Any motor vehicle which is required by the motor vehicle law to be licensed for highway use.

Ditchers and graders.

Paints and brushes.
Refrigerators, freezers, and other household appliances.
Garden and lawn equipment, parts, and supplies.
Electricity for lighting and other non-agricultural use.
Any materials used in the construction or repair of non-exempt: buildings, silos, grain bins, corn cribs, barns, houses, and any other permanent structures.
Items of personal apparel, including footwear, gloves, etc., furnished primarily for the convenience of the workers if the workers are able to participate in the production process without it.
Pumps.
All saws.
All tools, including forks, shovels, hoes, welders, power tools, and hand tools.
Building materials or building hardware such as lumber, cement, nails, plywood, brick, paint.
Plumbing, electrical supplies, and accessories, pumps.
Horses, ponies, or donkeys not used as draft animals in the production of agricultural products.
Food for non-exempt horses, ponies, etc.
Fertilizer, pesticides, herbicides, or seeds to be used for gardens and lawns.
Field tile or culverts.
Graders, ditchers, front end loaders, or similar equipment (except equipment designed to haul animal waste). Any replacement parts or accessories for the above items.

(d) Each of the following items is considered exempt from the sales tax ONLY when the purchaser is occupationally engaged in agricultural production and uses the items directly in direct production of agricultural products.

EXEMPT TRANSACTIONS

- (1) Livestock and poultry sold for raising food for human consumption and breeding stock for such purposes.
 - (2) Feed and medicines sold for livestock and poultry described in Item (1).
 - (3) Seeds, plants, fertilizers, fungicides, insecticides, and herbicides.
 - (4) Implements used in the tilling of land and harvesting of crops therefrom, including tractors and attachments.
 - (5) Milking machines, filters, strainers, and aerators.
 - (6) Gasoline and other fuel and oil for farm tractors and for other exempt farm machinery.
 - (7) Grease and repair parts necessary for the servicing of exempt equipment.
 - (8) Containers used to package farm products for sale.
 - (9) Equipment designed to haul animal waste.
 - (10) Equipment such as needles, syringes, and vaccine pumps.
- (e) The fact that an item is purchased for use on the farm does not necessarily make it exempt from sale [sic.] tax. It must be directly used by the farmer in the direct production of agricultural products. The property in question must have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces agricultural products. The fact that a piece of equipment is convenient, necessary, or essential to farming is insufficient in itself to determine if it is used directly in direct production as required to be exempt.
- (f) If a farmer makes a purchase tax exempt and later determines that the purchase should have been taxable, a use tax is due on the purchase price and should be remitted to the department of revenue along with the next annual income tax return, except for sales tax on gasoline which must be shown on the claim for motor fuel tax refund.

....

(Emphasis added).

Taxpayer claims that the John Deere "Gator" is exempt from use tax under [45 IAC 2.2-5-4\(d\)\(4\)](#), which states that transactions are exempt for "implements used in the tilling of land and harvesting of crops therefrom, including tractors and attachments." Specifically, Taxpayer argues that the John Deere "Gator" is used exclusively for farm use.

IC § 6-2.5-5-2 states that "transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities. " This statute applies a "dual direct" test in which a purchase for agriculture use is exempt only when the property is directly used in the direct production, extraction, harvest, or processing of agricultural commodities. Therefore, equipment used prior to the start of or after the end of the production, extraction, harvesting, or processing of agricultural commodities is not eligible for the agricultural commodities exemption. This standard is reiterated in [45 IAC 2.2-5-4 \(e\)](#) that states:

The fact that an item is purchased for use on the farm does not necessarily make it exempt from sale [sic.] tax. It must be directly used by the farmer in the direct production of agricultural products. The property in question must have an immediate effect on the article being produced. Property has an immediate effect on

the article being produced if it is an essential and integral part of an integrated process which produces agricultural products. The fact that a piece of equipment is convenient, necessary, or essential to farming is insufficient in itself to determine if it is used directly in direct production as required to be exempt.

Taxpayer argues that the exclusive use of the John Deere "Gator" for farming activities entitles it to be completely exempt for sales tax and use tax. Although the John Deere "Gator" is used to "haul fencing materials into the fields to build and fix fences in various pastures where live stock is kept, to haul brush cut from fence lines, to check on livestock and move them from pasture to pasture" the activities that Taxpayer claims are important farming activities, such activities are not direct use of the John Deere "Gator" in the direct production of agricultural products as required by law.

However, the John Deere "Gator" in question is used for reasons other than for the purpose of the hauling fencing materials and moving livestock. The Department has found that some of the stated reasons for the utilization of the John Deere "Gator" are exempt for sales and use tax. Under IC § 6-2.5-5-1 and IC § 6-2.5-5-2 exempt uses for which Taxpayer uses the John Deere "Gator" include: hauling of animal waste, and hauling feed to livestock to be sold. To the extent that the John Deere "Gator" is used for one of these exempt purposes the sales and use tax should be reduced on a prorated basis. Based on the Form AGQ-100 filed by Taxpayer and on information supplied in the protest process, there are some exempt uses of the John Deere "Gator" and a supplemental audit will be conducted to calculate the exemption rate for the John Deere "Gator" based on the information supplied by Taxpayer. The Department will recalculate the amount of use tax due using the percent exemption rates listed above and will issue a new bill to Taxpayer.

FINDING

Taxpayer's protest is sustained to the extent of the exempt percentage discussed above, subject to review in a supplemental audit.

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